

UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

SCOTT GERALD TUCKER,)	
)	
Plaintiff)	
)	
v.)	Civil No. 97-0274-B
)	
DEPARTMENT OF CORRECTIONS,)	
et al.,)	
)	
Defendants)	

RECOMMENDED DECISION

At the time of the events giving rise to this Complaint, Plaintiff was an inmate at the Downeast Correctional Facility in Bucks Harbor, Maine. Plaintiff alleges he was subject to the excessive use of force by the named Defendants. Defendants Drake and Howlett move for summary judgment on Plaintiff's claims against them. Plaintiff does not object to the entry of judgment in favor of Defendant Drake, but opposes Defendant Howlett's Motion.¹

The basis for Defendant Howlett's Motion for Summary Judgment is that Plaintiff has insufficient evidence from which a jury could conclude that Defendant

¹ Plaintiff indicated in his responsive memorandum that he was moving to dismiss Defendant Drake, but also that he did not oppose the entry of judgment. Defendants did not respond to Plaintiff's Motion to Dismiss Drake, which ordinarily would result in his dismissal without objection pursuant to Local Rule 7(b). The Court chooses to resolve this minor procedural dilemma by simply addressing the first motion to be filed: Defendants' Motion for Summary Judgment.

Howlett used excessive force upon the Plaintiff. Specifically, Defendant Howlett notes that Plaintiff has only identified him as the officer who placed handcuffs on Plaintiff. The Court disagrees. Plaintiff's evidence is that Defendant Howlett was one of several officers to appear at Plaintiff's cell in riot gear. After Plaintiff looked away from the wall in contravention of a direct order to the contrary, Defendant George punched Plaintiff twice in the kidney, and all of the officers pushed Plaintiff to the floor. He then had his arms pulled back, and was choked and handcuffed, all while being held in several places by the officers' knees. Plaintiff does not identify with particularity which of the several officers did what, but he does allege that Defendant Howlett participated in the incident, which left him bruised, cut and scarred. This evidence is sufficient to permit a jury to find in Plaintiff's favor on his claim against Defendant Howlett. In addition, a jury could impose liability on Defendant Howlett for a failure to take reasonable steps to protect Plaintiff. *Gaudreault v. Municipality of Salem*, 923 F.2d 203, 207 n.3 (1st Cir. 1990).

Conclusion

For the foregoing reasons, I hereby recommend Defendants' Motion for Summary Judgment be GRANTED as to Defendant Drake, and DENIED as to Defendant Howlett.

NOTICE

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) (1988) for which *de novo* review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to *de novo* review by the district court and to appeal the district court's order.

Eugene W. Beaulieu
United States Magistrate Judge

Dated on March 3, 2000.